

**Congress of the United States**  
**U.S. House of Representatives**  
**Committee on Small Business**  
2361 Rayburn House Office Building  
Washington, DC 20515-6315

**Memorandum**

To: Members, Subcommittee on Healthcare and Technology, House  
Committee on Small Business  
From: Chairwoman Renee Ellmers  
Date: April 7, 2011  
Re: Hearing: "The Creating Jobs Through Small Business Innovation Act of  
2011"

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**Introduction**

On Thursday, April 7, 2011 at 10:00 am, the Subcommittee on Healthcare and Technology of the House Committee on Small Business will conduct a legislative hearing titled, "The Creating Jobs Through Small Business Innovation Act of 2011." This hearing will be the second in a series of Committee events associated with the reauthorization of the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs.

This hearing will provide an opportunity to examine draft legislation reauthorizing the SBIR and STTR programs. Witnesses will discuss a proposal designed to improve and modernize the SBIR and STTR programs pointing out specific provisions that will benefit the program. Additionally, witnesses have been asked for suggestions as to how to improve the bill further. This memo will provide detailed information about each of the specific provisions of the draft legislation. For a more comprehensive examination of the SBIR and STTR programs, please refer to the memorandum prepared for the Committee's March 16, 2011 hearing titled, "Spurring Innovation and Job Creation: The SBIR Program." A link to this document can be found here: [http://smbiz.house.gov/UploadedFiles/Hearing\\_Memo.pdf](http://smbiz.house.gov/UploadedFiles/Hearing_Memo.pdf)

**Bill Highlights**

There is a very strong case for reauthorizing the SBIR and STTR programs. They have a proven track record of creating jobs, advancing innovative science to the

marketplace, and solving federal agency problems. Our legislative goal is to strengthen these programs to ensure efficient use of taxpayer dollars that help create more jobs by targeting the best science. Moreover, the bill does not cost anything, but rather continues to set aside 2.5% of all federal extramural research dollars for small businesses to compete for.

Among other things, the draft would reauthorize the SBIR and STTR programs for three years; increase Phase I and Phase II award sizes for both programs; allow for greater participation of small companies regardless of their financial structure; and enhance data collection for the programs. Again, the bill contains no authorization of appropriations.

The bill reauthorizes the programs for 3 years. That particular length was chosen because the bill makes a great deal of changes to these programs and a limited reauthorization will enable the Committee' to provide accurate and consistent oversight to determine the effect of reforms.

The bill also increases Phase I and Phase II award sizes for both of the programs. The award levels have not been raised since 1982. The cost of doing business, especially in high-end research, has exploded in the past 25 years. If the federal government is going to invest in research, it seems plausible to ensure companies have enough funds in order to accomplish their tasks.

The bill also aims to improve both internal and external evaluations by requiring the participating agencies to collect and disseminate specific information relating to program participants and outcomes, outreach efforts, Phase III successes, and geographic distribution of awards. Regular, rigorous program evaluation both by the participating agencies and Congressional oversight activities is essential for quality program management and accountability, and improved program output.

A common complaint among witnesses who have testified on this subject has been the length of time it takes for the entire process to be completed from submission of a grant proposal to final notice of award—making it difficult to plan very far into the future. Therefore, the bill requires agencies to complete their review process for applicants within 90 days (or 180 days if the agency is granted an extension by the SBA).

The bill also allows for greater participation of venture-capital backed firms in the SBIR program. In 2003, the Small Business Administration (SBA) reversed a 20-year-old policy by ruling that small businesses that are majority owned by venture capital companies can no longer compete for grants under the SBIR program, regardless of how few employees the companies have. By allowing VC-backed firms to participate, the program can more effectively leverage private dollars and ensure the

best ideas are funded, thereby protecting taxpayer dollars and improving the chances of an idea being commercialized, which is the goal of the program.

### **Section By Section Description**

#### *Title 1—Reauthorization of the SBIR and STTR Programs*

##### **Sec. 101. Extension Length**

This section extends the SBIR and STTR programs for 3 years until September 30, 2014.

##### **Sec. 102. SBIR and STTR Award Levels**

This section increases the size of SBIR and STTR awards from \$100,000 to \$150,000 for Phase I and from \$750,000 to \$1 million for Phase II, and requires the SBA to make annual adjustments of the award sizes for inflation. The provision prohibits any agency from issuing an SBIR or STTR award if the size of the award exceeds the award guidelines established in this section by more than 50 percent. Finally, the provision requires federal agencies to maintain information on awards exceeding the award guidelines; including the award amount; a justification for exceeding the guidelines; the identity and location of the recipient; and whether or not the recipient firm has received venture capital, hedge fund, or private equity firm investment, and if so, whether or not it is majority owned and controlled by one or more venture capital companies, hedge funds, or private equity firms. Nothing shall prevent a Federal agency from supplementing an award under the SBIR or STTR programs with Federal funds that are outside of the SBIR and STTR allocations.

##### **Sec. 103. Agency and Program Flexibility**

The section allows SBIR and STTR applicants to receive awards for subsequent SBIR or STTR phases at another agency and also allows small business concerns which received SBIR or STTR awards to receive awards for subsequent phases in either the STTR or SBIR program, respectively.

##### **Sec. 104. Elimination of Phase II Invitations**

This section requires that federal agencies conduct their solicitation of Phase II SBIR and STTR proposals without any invitation, pre-screening, pre-selection, or down-selection process between the first and second phase.

##### **Sec. 105. Phase Flexibility**

This section grants agencies the ability to provide a Phase II Award if the Agency finds that the small business concern has already completed the work typically done during Phase I.

##### **Sec. 106 and Sec. 107. Participation by Firms with Substantial Investment from Multiple Venture Capital Operating Companies in a Portion of the SBIR Program**

Section 106 allows the Departments of Health of Human Services and Energy and the National Science Foundation to permit firms majority owned and controlled by one or more

venture capital companies, one or more hedge funds, or one or more private equity firms to compete for up to 45 percent of the agency's SBIR funds. All other qualifying federal agencies shall allow majority owned private investment backed small businesses to compete for up to 35 percent of the agency's SBIR funds. Sec. 107 defines what affiliations are between various outside investors (such as venture capital companies, private equity firms, etc.) and small business concerns for purposes of determining whether the combination is eligible for an award under the SBIR program.

**Sec. 108. SBIR and STTR Special Acquisition Preference**

This section codifies the language from the SBIR and STTR Policy Directives confirming the intent of Congress to establish a special acquisition preference for SBIR and STTR Phase III awards. The provision clarifies that preference for contracts concerning research developed with SBIR or STTR funds should go to the developers and holders of SBIR and STTR technologies to the greatest extent practicable.

**Sec. 109. Collaborating with Federal Laboratories and Research and Development Centers**

This section reduces the burden on cooperation between SBIR/STTR firms and federal laboratories by ensuring that such subcontracting is generally permitted without the requirement for a waiver. The provision also ensures that subcontracting to federal laboratories is not required of SBIR or STTR awardees. Finally, it clarifies that firms that have entered into a cooperative agreement with a federal laboratory are eligible to receive SBIR/STTR awards.

**Sec. 110. Notice Requirement**

This section ensures that the SBA is notified any time the SBIR or STTR policy directives are challenged in court.

**Sec. 111. Express Authority for an Agency to Award Sequential Phase II Awards for SBIR or STTR Funded Projects**

The section allows SBIR and STTR applicants to receive one sequential Phase II award for a single project.

*Title II—Commercialization and Outreach Initiatives*

**Sec. 201. Technical assistance for awardees**

This section increases the amount of discretionary technical assistance that SBIR and STTR agencies can contract out to provide to awardees from \$4,000 to \$5,000 for Phase I awards and from \$4,000 to \$5,000 per year for Phase II awards. The provision also states that this amount shall be in addition to the amount of the recipient's award. It also requires agencies to provide SBIR and STTR award winners who wish to procure their own technical assistance with the allowable amount. Finally, the provision prohibits the agencies from using these funds to pay its contractor for technical assistance for a given SBIR or STTR award unless the contractor provides the technical assistance to that awardee.

**Sec. 202. Commercialization Readiness Program at Department of Defense**

This section extends the SBIR Commercialization Pilot Program (CPP) at the Department of Defense permanently and extends it to the department's STTR program. It also changed the name to the Commercialization Readiness Program. The provision authorizes the Secretary of Defense to establish goals for transitioning Phase I and Phase II technologies in subcontracting plans for contracts of \$100 million or more. The provision also requires the Secretary of Defense to set a goal to increase the number of Phase II contracts that lead to technology transition into programs of record or fielded systems and to use incentives to encourage agency program managers and prime contractors to meet that goal. Finally, the provision includes reporting requirements on the status of projects funded through CRP.

**Sec. 203. Commercialization Readiness Pilot Program for Civilian Agencies**

This section authorizes agencies other than the Department of Defense to create Commercialization Readiness Pilot Programs (using no more than 10% of their program authorization) to support advanced development of small business technologies which are facing high manufacturing or regulatory costs. The provision authorizes these agencies to grant post-Phase II awards up to two times the regular size (up to \$3 million). Authority of establish such a pilot program expires at the end of FY2014.

**Sec. 204. Interagency Policy Committee**

This section establishes an SBIR/STTR Interagency Policy Committee co-chaired by the Director of the White House Office of Science and Technology Policy (OSTP) and the Administrator of the Small Business Administration (SBA) to review and make policy recommendations on ways to improve the effectiveness and efficiency of the SBIR and STTR programs. The Committee will be comprised of the two chairs, and representatives of the four largest SBIR participating agencies is expected to submit three reports to relevant Congressional committees within the two years after passage of the law.

**Sec. 205. Lack of Commercialization Success**

This section is not yet complete.

**Sec. 206. Clarifying Definition of Phase III**

This section revises the definition of "Phase Three" of the SBIR program so that it is clear that such work shall be directed toward commercial applications and derives from research and development completed in earlier phases.

**Sec. 207. Shortened Period for Final Decisions on Proposals and Applications**

This section requires that not later than 90 days after, and if the Administrator authorizes an extension, then not later than 180 days, from the date on which the solicitation closes for SBIR and STTR programs, that the Administrator make a decision on each proposal submitted. It also allows the Director of NIH to make an award under the SBIR or STTR programs when an application for award undergoes a technical and scientific peer review.

*Title III—Oversight and Evaluation*

**Sec. 301. Streamlining Annual Evaluation Requirements**

This section requires the Administration to report to Congress at least annually the number of proposals received from firms with venture capital, private equity, or hedge fund investment, including those owned and controlled by multiple venture capital, private equity, or hedge fund firms. It also requires the Administration to report on efforts to increase outreach to firms owned and controlled by women and socially or economically disadvantaged individuals, the implementation and compliance with the allocation of funds for firms majority owned and controlled by multiple venture capital, private equity or hedge fund companies, and appeals of Phase III awards and notices of noncompliance with the SBIR and the STTR Policy Directives. Finally, the section requires the Administration to coordinate the implementation of electronic databases at the participating agencies.

#### **Sec. 302. Data Collection From Agencies for SBIR**

This section requires agencies with an SBIR program to collect data annually on whether or not an applicant or awardee has venture capital, private equity or hedge fund investment, if it is majority owned and controlled by multiple venture capital, private equity, or hedge fund firms, the amount of that outside capital it has received at the time of award, if it has foreign investors and who they are, if it is owned by a woman, if it is owned by a socially or economically disadvantaged individual, and if it has a university affiliation. The provision also requires agencies to justify awards given that exceed the statutory guidelines. Agencies must collect data and report annually on whether or not the award winner is from a state receiving less federal research funding for small businesses than a majority of other states.

#### **Sec. 303. Data Collection From Agencies for STTR**

This section requires agencies with an STTR program to collect data annually on whether or not an applicant or awardee has venture capital, private equity or hedge fund investment, if it is majority owned and controlled by multiple venture capital, private equity, or hedge fund firms, the amount of that outside capital it has received at the time of award, if it has foreign investors and who they are, if it is owned by a woman, if it is owned by a if it is owned by a socially or economically disadvantaged individual, and if it has a university affiliation. The provision also requires agencies to justify awards given that exceed the statutory guidelines.

#### **Sec. 304. Public Database**

This section requires that the public database maintained by the Administrator include information on whether or not a firm receiving an award has venture capital, private equity or hedge fund investment, if it is majority owned and controlled by multiple venture capital, private equity, or hedge fund firms, the amount of that outside capital it has received at the time of award, is owned by a woman, is owned by a if it is owned by a socially or economically disadvantaged individual, or has a university affiliation.

#### **Sec. 305. Government Database**

This section requires that the government database maintained by the Administrator in coordination with the agencies for the purposes of evaluation of the SBIR and STTR programs include information on the ownership structure and affiliations of awardee firms that have venture capital, private equity, or hedge fund investment, and that are majority owned and controlled by multiple venture capital, private equity, or hedge fund firms whether or not a firm is owned by a woman, is owned by a minority, or has a university affiliation.

**Sec. 306. Accuracy in Funding Base Calculations**

This section requires the Comptroller General of the United States to conduct an audit of the SBIR and STTR programs to determine whether federal agencies are complying with the expenditure requirements.

**Sec. 307. Continued Evaluation by the National Academy of Sciences**

This section authorizes the National Academy of Sciences to continue its evaluation of the SBIR program through the end of fiscal year 2021 and requires that updates of the studies be provided to Congress every four years from the date of enactment.

**Sec. 308. Technology Insertion Reporting Requirements**

This section requires the Administration to include in its annual report to Congress information on Phase III awards issued by SBIR and STTR agencies, including the dollar amount of these awards, their recipients, and the name of component or agency issuing them.

**Sec. 309. Obtaining Consent from SBIR and STTR Applicants to Release Contact Information to Economic Development Organizations**

This section requires each Federal agency that conducts an SBIR or STTR program to enable small business concerns that are SBIR or STTR applicants to indicate whether that Federal agency has consent to identify the small business concern to local and State-level economic development organizations.

**Sec. 310. Pilot to Allow Funding for Administrative, Oversight, and Contract Processing Costs**

This section requires that the Administrator allow each Federal agency to not use more than 3 percent of the funds allocated to the SBIR programs for the first fiscal year beginning after the enactment of this subsection, and each year thereafter through fiscal 2014, for costs relating to administrative, oversight and contract processing activities for SBIR programs that the Federal agency was not carrying out the last full fiscal year before the enactment of this subsection, as well as for the period of 3 years after the enactment of this subsection, for the implementation of commercialization and outreach initiatives that were not in effect on the date of the enactment of this subsection.

**Sec. 311. GAO Study with Respect to Outside Investment Involvement**

This section requires that not later than 2 years after the date of the enactment of this Act, and every 2 years thereafter, the Comptroller General of the United States conduct a study on the impact of requirements relating to venture capital operating company, private equity firm, and hedge fund involvement in the SBIR and STTR programs.

**Sec. 312. Reducing Vulnerability of SBIR and STTR Programs to Fraud, Waste, and Abuse**

This section requires the Administrator to, not later than 90 days after the enactment of this Act, amend the SBIR Policy Directive and the STTR Policy Directive to include measures to prevent fraud, waste, and abuse. Critical provisions include:

- Establishing dedicated administrative funds to be used by participating SBIR/STTR programs for targeted reviews of award recipients that could be at high risk for waste, fraud and abuse;
- Requiring Inspectors General of participating SBIR/STTR federal agencies to establish fraud detection measures, coordinate fraud-related information sharing between agencies, and provide fraud prevention-related education and training to agencies administering the program;
- Requiring the Small Business Administrator to amend the SBIR and STTR Policy Directives to include specific measures to prevent waste, fraud and abuse;
- Creating a special SBIR/STTR telephone hotline that allows individuals to report waste, fraud and abuse;
- Ordering the Government Accountability Office to conduct a study assessing the SBIR/STTR programs' vulnerabilities to waste, fraud and abuse; and
- Strengthening the Small Business Administration's existing Tech-Net Database by requiring SBIR and STTR applicants to submit additional information that will help reduce "duplicative funding."

### **Sec. 313. Simplified Paperwork Requirements**

This section directs the SBA Administrator to issue regulations or guidelines to (the extent possible) standardize SBIR and STTR application paperwork.

## *Title IV—Policy Directives*

### **Sec. 401. Conforming amendments to the SBIR and the STTR Policy Directives**

This section requires conforming amendments to the SBA's SBIR and STTR Policy Directives within 180 days to implement the provisions of this Act. It also requires that the Administration publish the SBIR and STTR Policy Directives in the Code of Federal Regulations within 180 days.

## *Title V—Other Provisions*

### **Sec. 501. Research Topics and Program Diversification**

This section directs federal agencies required to establish an SBIR or STTR program, when determining appropriate research topics, to give special priority to applications for the support of projects relating to nanotechnology, rare diseases, security, energy, transportation, or improving the security and quality of the water supply and the efficiency of water systems through the use of technology. It requires such agencies to: (1) give consideration to research topics identified by the NAS, the NIH, and the national nanotechnology strategic plan; and (2)



encourage applications from small businesses located in underrepresented areas or areas with excessive unemployment rates, as well as small businesses owned and controlled by women, veterans, or Native Americans. It also removes a requirement that certain specified DOD technology or research plans be utilized when identifying appropriate DOD research and development focus under SBIR or STTR programs.

**Sec. 502. Report on SBIR and STTR Program Goals**

This provision directs each federal agency required to participate in an SBIR or STTR program to: (1) develop metrics in conjunction with the Interagency Policy Committee described in Sec. 204 to evaluate the effectiveness and benefit of such program; (2) conduct an annual evaluation of their program using such metrics; and (3) report evaluation results annually to the Administrator and the relevant Congressional Committees.

**Sec. 503. Competitive Selection Procedures for SBIR and STTR Programs**

This section requires all SBIR or STTR funds to be awarded pursuant to competitive and merit-based selection procedures.

**Sec. 504. SBA Regulations**

This section is not yet completed.